

IN THE MATTER OF ARBITRATION BETWEEN

**SAINT PAUL PUBLIC SCHOOLS
INDEPENDENT SCHOOL DISTRICT
NO. 625**

(Employer)

and

DECISION
(Contract Interpretation
- Application)
BMS Case No. 15-PA-0559

**AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, MN COUNCIL 5,
LOCAL UNION NO. 844**

(Union)

ARBITRATOR: Mr. Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: September 22, 2015 at the offices of MN
Bureau of Mediation Services, St. Paul MN.

RECEIPT OF POST-HEARING BRIEFS: Via agreement by the Parties, post-hearing briefs were to be filed by November 2, 2015. On that date, the Union filed its brief and concurrently provided a copy to the Employer. However, no brief was received from the Employer. On November 6, 2015 the Employer advised this Arbitrator that due to an inadvertent oversight, it had missed the brief deadline. This Arbitrator granted the Employer permission to file a Late brief and it did file such brief by that same day, with a copy to the Union. The Arbitrator concurrently granted the Union permission to file a Reply brief by November 13, 2015 and it did so in a timely manner.

APPEARANCES

FOR THE EMPLOYER:

Laurin J. Cathey, Executive Director,
Human Resources
St. Paul Public Schools, ISD 625
360 Colborne Street
St. Paul MN 55102
(651) 767-8201

FOR THE UNION:

Linda Jackson, Field Representative
AFSCME, MN Council 5
300 Hardman Avenue South
South St. Paul MN 55075
(651) 287-0574

JURISDICTION

The Parties stipulated that this Arbitrator has been selected and appointed in accordance with the provisions of *Article 19* of the applicable labor agreement and thereby possesses the authorities, duties and responsibilities set forth therein to hear and resolve this dispute.

THE ISSUE

The Parties stipulated that the Issue herein is; *Did the Employer demote, bump and displace employee Michael Conlin, from his job classification, on or about July 1, 2014 in violation of the applicable labor agreement, as alleged? If so, what shall be the remedy?*

THE EMPLOYER

St. Paul Public Schools, ISD 625 (the District), is one of the largest school districts in the State of Minnesota, serving some 39,000 students. The district educational system currently consists of some 250 learning sites, including about 60 school facilities covering Pre-Kindergarten through High School. The system is staffed by some 5,400 employees, most of whom are represented by various labor organizations and with whom the district has about 28 on-going contractual collective bargaining relationships. The Employer's current contractual bargaining relationship with this Union covers Office, Clerical, Administrative and Technical employees.

THE UNION

The American Federation of State, County and Municipal Employees (AFSCME) is a nationwide labor organization representing some 1.6 million employees working in the public sector of the economy in positions such as corrections officers, nurses, sanitation workers, EMTs, school employees, etc. AFSCME, MN Council 5 includes Local No. 844; which represents certain Clerical and Technical employees of the Employer, including the Grievant who is the subject of this matter.

COLLECTIVE BARGAINING HISTORY

The Employer and Union have had a continuing and on-going collective bargaining relationship dating back decades and this relationship has been reflected in a successive series of labor agreements during that period. The

Parties agree that the applicable labor agreement in this matter was effective July 1, 2012 and was scheduled to expire Jun 30, 2014.

BACKGROUND

There is little or no disagreement or dispute between the Parties with respect to the facts underlying this matter. The essence of the dispute involves a disagreement concerning the interpretation and application of certain contract language and provisions to the fact situation.

The Record shows that the Grievant, Michael Conlin, commenced employment with the District in July, 2002. His job classification was Distribution Service Worker at a starting wage of \$18.65/hour. That job classification, at all times material herein, was included in the Union's contractual collective bargaining unit.

Mr. Conlin continued to serve in that same job classification until March, 2011 at which point he received a promotion to the job classification of Furniture Processor. This promotion classification left Mr. Conlin's status unchanged with respect to the Union, as his new classification was also included in the Union's contractual collective bargaining unit.

With his promotion in 2011, Mr. Conlin's wage rate increased from \$22.65 to \$25.24 as a Furniture Processor.

On July 1, 2014, Mr. Conlin was displaced and demoted from his position as a Furniture Processor to a lower level job classification of Distribution Worker - a position still within the Union's contractual collective bargaining unit. At the time of the demotion, Mr. Conlin's wage rate, as a Furniture Processor, had risen to \$27.32, but the demotion reduced his wage rate to \$24.34 or a reduction of \$2.98/hour from his former position.

Mr. Conlin had been previously advised of the impending demotion/displacement via a letter, dated June 24, 2014, from Kha Vang, a Representative in the District's Workforce Management department. The letter opened with the following statement:

*"This is notification that you have been displaced from your current position of Distribution Supervisor¹ ... with the Pre-K Program **by a more senior employee** [Emphasis added]. Your last day of work in this assignment was June 30, 2014."*

Needless to say, Mr. Conlin was very unhappy with the news of his demotion and subsequently brought the issue to the Union's attention. The Union commenced an informal investigation into the matter. The Union learned that Mr. Conlin was

¹ Apparently Ms. Vang was confused in that Mr. Conlin actually held the position of Furniture Processor and Mr. Kramer was the Distribution Supervisor.

being specifically displaced in his job classification of Furniture Processor by Kevin Kramer.

An examination of Mr. Kramer's employment record with the District revealed that he had held the Furniture Processor job classification in the Union's bargaining unit beginning in 2002. He had occupied that same classification until about 2008, at which time he accepted a promotion to a position as a District Claims Supervisor or Distribution Supervisor. The change in job classification resulting from the promotion moved him out of the AFSCME Local 844 contractual bargaining unit and into another contractual bargaining unit represented by a different union, the City of St. Paul Manual and Maintenance Supervisors Association (MMSA).

Apparently at some point toward during the course of the 2013-2014 school year, Mr. Kramer was advised by the District that his position as a Claims - Distribution Supervisor was being eliminated as part of District budget reductions. That news obviously caused Mr. Kramer great concern, as the elimination of his job position could cause him to be laid off and jeopardized his tenure of more than 20 years as a District employee.

As a result of subsequent consultations with the District's Human Resources (HR) Department, it was determined that Mr. Kramer could avoid layoff, when his current job assignment was eliminated, by applying *Section 19B.2b* of the City of St. Paul Civil Service Rules (CSR), concerning *Leave of Absence* to his situation:

"19.B - Reasons for Leave of Absence

2) Following is a list of reasons for which leaves of absence without pay shall be granted:

b) Appointment of an employee to an Unclassified² City position. Such leave shall be granted for a period extending over the time of actual and continuous service in such position or positions. At the termination of the exempt service such employee shall be reinstated to their former Classified position or in an equivalent position without loss of any right or privilege that would have accrued to the employee had they not left the former position, including, but not limited to any salary or fringe benefit increments accruing to such position during the leave, except for accumulating service credit for police and fire pension unless the position is in the police or fire service..."

² In the hearing, Mr. Cathey, the Employer's Executive Director for Human Resources, was asked to define the difference between an "Unclassified" and a "Classified" job position in the District? He testified that to simply differentiate the two terms, an "Unclassified" position in the District does not comport with or adhere to Civil Service Rules (CSRs) and "Classified" positions do adhere to the CSRs. He further noted that Mr. Kramer's job classification as a Distribution Supervisor was an "Unclassified" position, not subject to the CSRs, and was also in a different contractual bargaining unit from his former position as a Furniture Processor - that position being a Classified position in the AFSCME contractual bargaining unit.

Based upon the language of 19B.2b of the CSR, it was the determination of the District that:

1. Mr. Kramer was currently serving in an Unclassified job classification (Distribution - Claims Supervisor) that was about to be eliminated.
2. He had served in that same job position since 2008 or approximately six (6) years.
3. When he accepted the promotion to the Distribution -Claims Supervisor position in 2008, he was then working as a Furniture Processor - a job classification in the Union's contractual bargaining unit.
4. He had been working in the Furniture Processor classification since 2002.
5. When he accepted the promotion to the Distribution - Claims Supervisor position in 2008, Mr. Kramer had accrued 21 years of service within the Union's contractual collective bargaining unit.

The District then looked at the current status of Mr. Kramer's previous job classification of Furniture Processor in the Union's bargaining unit and determined that Mr. Kramer had more seniority than Mr. Conlin, the incumbent. As a result, the District concluded that Mr. Kramer had the right, under Section 19B.2b of CSR, to revert back to his previous job classification of Furniture Processor and "bump" or displace Mr. Conlin, the incumbent from that position.

As a result of its own investigation into the situation, the Union chose to disagree with the District's decision and decided to grieve the matter, on behalf of Mr. Conlin.

THE GRIEVANCE

On July 23, 2014, the Union filed a formal Step 1 written Grievance with the Employer on behalf of Mr. Conlin. In the grievance, the Union specifically alleged that, "*Michael Conlin was bumped out of his position by someone no longer in the union.*" and that such action by the Employer violated Section 19B.2b CSR and all applicable articles. The Union's requested remedy was that Mr. Conlin be returned to his position as Furniture Processor, that the salary difference be restored and that he be otherwise made whole. The Step 1 Grievance was denied by the Employer.

At Step 2, of the Grievance procedure, the Parties met to discuss the issue on August 7, 2014. Present were Mr. Conlin, Union Representative Martin Hoerth and Joyce Victor, the District's Assistant Employee Relations Manager. The Union contended that an employee who leaves their contractual bargaining unit to take another job position outside the bargaining unit, should not be able to return and "bump" back into the unit and displace an incumbent employee and that there is no contractual provision that permits such action. In response, Ms.

Victor outlined the Employer's rationale and determination that because Mr. Kramer had left a "classified" position of Furniture Processor in the Union's contractual bargaining unit back in 2008 to accept an "Unclassified" position as a Distribution - Claims Supervisor position, that he had a right under Section 19B.2b of CSR to "bump" back into his previous "Classified" position as a Furniture Processor, as a result of the elimination of his current "Unclassified" position. She noted that Mr. Kramer had more seniority than Mr. Conlin - the current incumbent in the Furniture Processor position.

Following the Step 2 meeting, Ms. Victor informed the Union by letter dated August 12, 2014 that the Grievance was being denied at Step 2.

The Parties met again on September 10, 2014 to discuss the Grievance at Step 3 of the Grievance Procedure. The positions of each of the Parties remained essentially unchanged from their previous Step 2 meeting. On September 19, 2014, Laurin Cathey, the District's Executive Director for Human Resources, informed the Union by letter that the Grievance was being denied at Step 3.

The Union subsequently decided to move the Grievance to Step 4 - Arbitration and, Ergo, here we all are.

SUMMARY OF THE PARTIES' POSITIONS AND MAJOR ARGUMENTS

The Employer:

As outlined in the hearing, the foundation of the District's position in this matter focuses on the District's interpretation of the City of St. Paul's Civil Service Rule (CSR) 19.B (2b) - *Leaves of Absence*. It is the District's position that when Kevin Kramer's unclassified job position as a Distribution Supervisor was eliminated, due to budget reductions, the CSRs provided clear direction that he should be reinstated to his former classified position as a Furniture Processor or a similar position. Obviously, the elimination of his Distribution Supervisor caused this involuntary move for Mr. Kramer.

In support of its position the District references Article 3, Section 3.1 of the Union's applicable labor agreement. This Article outlines the fact that the Parties to this agreement understand the Maintenance of Standards, as it pertains to the CSRs:

Article 3 - Maintenance of Standard

Section 3.1: The parties agree that all conditions of employment relating to wages, hours of work, overtime, differentials, vacations and all other general working conditions shall be maintained at not less than the highest minimum standard set forth in the Civil Service Rules of the City of St. Paul (Resolution No. 3250) and the Saint Paul Salary Plan and Rates of Compensation at the time of the signing of this Agreement, and the

conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.

It is the observance of this provision in the AFSCME labor agreement that supports the District's application of the CSRs to this issue. Specifically, Section 19B, subsection 2(b) [See text on Page 4] constitutes a specific directive for dealing with individual employees who are appointed to Unclassified positions.

The District acknowledges that during the arbitration hearing, the Union was successful in providing specific language in the applicable labor agreement that speak to applications of seniority and references to the handling of Leaves of Absence. However, the District believes the Union fell short in proving that these individual contract provisions effectively speak to this matter in the manner that the Civil Service Rule 19B (2b) does.

During the hearing the district proved that its obligation to return Mr. Kramer to his former position, or similar, was honored. Furthermore, the District emphasizes that since Mr. Kramer was a member of the AFSCME bargaining unit prior to his promotion to the Unclassified position; that a return to any position or similar would have been within the AFSCME bargaining unit. The District feels this addresses the Union's assertion that Mr. Kramer cannot be placed back into their bargaining unit.

The District also maintains that, since³ the accrual of rights and benefits to Mr. Kramer occurred without loss, that it was correct in awarding him the Furniture Processor position on the basis of his previous seniority in the AFSCME contract unit.

The District does not feel that the Union's submission of the 1991 District Court Decision and arbitration decision by arbitrator Thomas Gallagher is relevant to this matter. Specifically, that past decision addressed an issue of employees, who were facing layoff in one bargaining unit, being placed into positions in another bargaining unit where they had not previous work history or seniority. Unlike that situation, Mr. Kramer had been working in AFSCME bargaining unit positions for some 21 years prior to his promotion to the Distribution Supervisor position.

The District also considers the actual outcome achieved to results if the approach the Union suggests had been followed. Under the Union's approach, Mr. Kramer, an employee with more than 25 years of service in the District, would be laid off. Instead, the approach and action taken by the District kept both Mr. Conlin and Mr. Kramer fully employed.

Accordingly, the District - Employer respectfully urges the Arbitrator to deny the Grievance in its entirety and to uphold and sustain the Employer's action in this matter.

The Union:

The bargaining unit encompassed by the applicable labor agreement between the Employer and this Union is clearly defined in Article 1 of that document:

Article 1 - Recognition:

1.2: *The bargaining unit covered by this Agreement shall consist of the following: All office, clerical, administrative and technical personnel who are employed by Independent School District No. 625, St. Paul, Minnesota, who work a minimum of fourteen (14) hours per week and sixty-seven (67) days per year and who are public employees within the meaning of Minnesota Statute (M.S.) §179a.03, Subd. 14 in the classifications listed in Appendix B; excluding supervisory, confidential and all other employees.*

Article 16 - Seniority, in that same Agreement, is defined as follows:

16.1: *Seniority, for the purpose of this Agreement, shall be defined as follows: The length of continuous, regular and probationary service with the Employer from the date an employee is first certified and appointed to a class title covered by this Agreement, it being further understood that seniority is confined to the current class assignment held by an employee. In cases where two (2) or more employees are appointed to the same class title on the same date, the seniority shall be determined by the employee's rank on the eligible list from which the certification was made.*

16.2: *Seniority shall terminate when an employee retires, resigns or is discharged.*

16.3: *In the event it is determined by the Employer that it is necessary to reduce the Work force, employees will be laid off by class title within each department based on inverse length of seniority as defined above. For the purposes of this section the following groupings of job titles shall be considered as one classification:*

- *Clerk I BOE and Clerk II BOE;*
- *Clerk Typist I BOE and Clerk Typist II BOE and*
- *Data Entry Operator I BOE and Data Entry Operator II BOE.*

If there are vacancies in the class titles on which seniority is based, in any other department, the affected employee will be placed in such vacancy.

If two or more vacancies are available, the Human Resources Department shall decide which vacant position the affected employee shall fill.

Whenever possible, employees shall be placed in a position with the same or similar number of annual hours per work year as the position from which they are being displaced. If no vacancy exists, the least senior employee in such titles shall be identified. The affected employee shall have the right to claim that position and the least senior employee shall be the employee laid off.

16.4: In cases where there are promotional series, such as Technician I, II, III, etc., when the number of employees in those higher titles is to be reduced, employees who have held lower titles, which are in this bargaining unit, will be offered reduction to the highest of these titles to which class seniority would keep them from being laid off, before layoffs are made by any class title in any department.

The preceding Articles in the applicable labor agreement are what the Employer will reference, consider and rely on when considering demotions, promotions and all other issues and concerns that relate to the job classifications covered by the AFSCME Agreement. It should be noted that the above-referenced Articles do not provide any remedies for employees who are not members of the contractual bargaining unit, e.g. supervisors, confidential employees and all other employees.

The Employer's position is that its action in displacing Michael Conlin from his position as a Furniture Processor in the Union's bargaining unit and replacing him with Kevin Kramer, is both required and permitted by Section 19B (2b) of the Civil Service Rules. However, a careful perusal of that portion of the CSRs does not reveal any language that states that "bump" or "bumping" or otherwise displacing an employee in another bargaining unit is an appropriate action or remedy.

The Employer contends that the CSRs are what should be referenced when an Unclassified supervisory position is eliminated. In its Opening Statement, the Employer said, "*...that Civil Service Rules provided clear direction that he [Mr. Kramer] should be reinstated to his classified role or a similar position.*" However, again, it should be noted that CSR 19B (2b) does not use the word "bump".

The Union notes that CSR 19B (2b) concerns a Leave of Absence. Article 9 of the applicable Union Agreement provides specific direction for employees returning from a Leave of Absence:

*9.4: General non-compensatory Leave of Absence. After three (3) months of employment, an employee may make application for a leave of absence not to exceed one (1) year. A leave of absence shall be granted on the basis established in the Civil Service Rules (Resolution No. 3250).
9.4.1: Said rules are supplemented and amended by the following provision:
All requests for unpaid leave are subject to District approval. Such requests are to be submitted to the Human Resource Department on a form provided by the Employer.*

An employee returning from an approved leave shall be returned to his/her original position unless the position has been filled permanently or offered to another employee in accordance with Human Resources staffing procedures and terms of this Agreement, in which case the employee will be offered the opportunity to return to employment in an equivalent position, if a vacancy is available after the conclusion of the leave. If no equivalent vacancy exists at that time, the District will continue to consider the employee's return for two (2) years after the conclusion of leave. If no equivalent vacancy has occurred or has been assigned by the end of two (2) years from the conclusion of the leave, the employee's name will be dropped from consideration as though he/she had resigned and the employee will be considered resigned.

"Equivalent vacancy" means a position of the same job classification held by the employee at the time of the leave, which remains in existence, has been vacated by the resignation or termination of another employee and which the District intends to fill in the same classification.

The Union has shown in the arbitration hearing that the Employer's action in allowing Kevin Kramer, a non-bargaining unit employee, to displace or "bump" Michael Conlin, from his bargaining unit job classification of Furniture Processor clearly violated the *Article 1 Recognition* and the *Article 16 Seniority* provisions of the applicable labor agreement in this matter

During the hearing, the Employer introduced the current collective bargaining agreement (CBA) between the District and the City of St. Paul Manual and Maintenance Supervisors Association (MMSA).³ In that contract, the Employer specifically referenced Article 6 - Seniority, 6.4, Subd. 3:

Article 6 - Seniority:

6.4, Subd. 1 *In the event it is determined y the Employer that it is necessary to reduce the workforce, employees will be laid off by class title within each division based on inverse length of "Class Seniority". Recall from layoff shall in inverse order of layoff, except that recall rights shall expire after two (2) years of layoff.*

Subd. 2 *In cases where there are promotional series, such as Foreman I, Foreman II, Foreman III, etc., when the number of employees in these higher titles is to be reduced, employees who have held lower titles, which are in the bargaining unit, will be offered reductions to the highest of these*

³ The Manual and Maintenance Supervisors Association (MMSA) is a labor organization representing a bargaining unit consisting of all facility and nutrition services supervisors employed by the District. The current labor agreement was effective January 1, 2014 and is scheduled to expire on December 31, 2015. Mr. Kramer, in his job classification of Distribution Supervisor, was a member of the bargaining unit represented by MMSA and covered by that labor agreement.

titles to which "Class Seniority" would keep them from being laid off, before layoffs are made by any class title in any department.

Subd. 3 It is further understood that a laid off employee shall have the right to placement in any lower-paid class title, provided said employee has been previously certified and appointed in said lower-paid class title. In such cases, the employee shall first be placed on a reinstatement register and shall have "Class Seniority" based on the date originally certified and appointed to said class. Employees may also apply for positions in a lower class, but may, nevertheless, return to original class as provided in Subd. 1, above.

Employees who are laid off from their current job title shall have rights to vacancies in previously held job titles in other bargaining units from which they have been promoted, A right to a vacancy is shall be based upon the employee's date originally certified and appointed to the previously held job title. Rights to these vacancies shall exist for up to two (2) years after layoff has occurred. Whenever possible two weeks of notice shall be given any employee laid off. In the event of a tie in seniority, total years of regular service will be used to break the tie.

Employees who transfer into other District positions, outside of the AFSCME bargaining unit do not acquire or maintain any right to return to that bargaining unit by displacing or "bumping" current employees in that unit.

In the Declaratory Judgment Decision and Award⁴, submitted into the Record as Union Exhibit #7, Arbitrator Thomas Gallagher wrote, "*I decide that the City's proposal to use voluntary reductions to move non-bargaining unit personnel into new bargaining positions, will violate the seniority provisions of the labor agreements that cover the employees who would thus be displaced.*" Gallagher further stated, "*It is in the Plaintiff's [City] interest not to approve a voluntary reduction when approval would cause Plaintiff to violate another labor agreement.*"

The Employer unjustly bumped, demoted and reduced the wage rate of Michael Conlin, the Grievant. As a result of the Employer's action, Mr. Conlin suffered a reduction in wage from \$27.32/hour down to \$24.95/hour or a net loss of \$2.37/hour. His overall loss of wages, as a result of his displacement and demotion totals \$4,152.24.

As was noted in the hearing, following his displacement and demotion in June, 2014, Mr. Conlin subsequently chose to retire from the District on April 30, 2015. Because of the displacement, demotion and the reduction in his hourly wage, he has also suffered a reduction of about \$25.00 per month in his PARA retirement benefit.

⁴ *City of St. Paul and AFSCME, Council 14, Local 1842, et. al.*, BMS Case No. 92-PP-35-B, (Arbitrator T. Gallagher, 1992) District Court File No. C5-91-12958.

The Union relies on the language of its collective bargaining agreement with this Employer. That CBA supersedes all other documents where language specifically addresses this Issue. Regardless of a worker transferring to or from and Unclassified or Classified position, the AFSCME CBA in *Artical 9 - Leaves of Absence, 9.4.1* states;

"An employee returning from an approved leave shall be returned to his/her original position unless the position has been filled permanently or offered to another employee in accordance with Human Resources staffing procedures and the terms of this Agreement; in which case the employee will be offered the opportunity to return to employment in an equivalent position, if a vacancy is available after the conclusion of the leave. If no equivalent vacancy exists at that time, the District will continue to consider the employee's return for two (2) years after the conclusion of leave. If no equivalent vacancy has occurred or has been assigned by the end of two (2) years from the conclusion of the leave, the employee's name will be dropped from consideration as though he/she had resigned and the employee will be considered resigned."

The Union believes that the Employer should have followed the procedure set forth in *Article 9*, above, in handling Mr. Kramer's potential return to his previous position in the Union's bargaining unit - rather than its arguable insistence on following CSR 19B,(2b).

The Union respectfully requests that the Arbitrator sustain this Grievance and order the Employer to make Mr. Conlin Whole for his lost wages and any other benefits, including his retirement pension.

ANALYSIS, DISCUSSION AND FINDINGS

As we view the World of Work and the employees who populate that world, it should be obvious how important our jobs are to each of us. Our jobs, of course, are essential to our personal economic survival and in many cases, to the other members of our families, but perhaps more importantly our jobs also contribute to our personal, psychological well-being in several ways, 1) Our job typically involves about one-third of our personal time, 2) Our job contributes to our self-image and our sense of self-worth, 3) Our job is a measure of our personal contribution to the betterment of our community and the world, in general and we can all probably think of other benefits we derive through our work and our jobs.

At the top of a typical employee's fears and dire concerns is probably the fear of suddenly and unexpectedly suffering the loss of one's job. Following close behind is probably the fear that that our job will undergo sudden and unexpected major changes.

As noted previously in the basic outline of facts in this matter, we have two employees who each experienced serious and unexpected changes with respect to their jobs in the school District. First we have the Grievant herein, Mr. Conlin, who, by 2011, had finally achieved his goal of being a Furniture Processor. We also have Mr. Kramer, who in 2008 accepted a promotion to a supervisory position in a new work area of the District, which presented him with a whole new set of both challenges and opportunities.

The event that triggered the chain of events that brings us to this arbitration proceeding occurred in about late 2013 or early 2014. At that time, the Employer informed Mr. Kramer that, due to budget cuts in the District, his job position as a Distribution Supervisor would be eliminated at the conclusion of the 2013-2014 school year. The fear set in immediately. What was he going to do? He had about six (6) years of seniority in his current job classification and about 27 years of overall seniority in the District.

As indicated in the fact outline, the Employer-District subsequently took certain actions that resulted in Mr. Kramer avoiding a potential layoff as he "bumped" back into the Furniture Processor position that he had left six (6) years earlier to take the Distribution Supervisor job. Concurrently, Mr. Colin was advised by the District that he was being demoted and displaced from the Furniture Processor job, to accommodate Mr. Kramer's return to that position; because his position as a Distribution Supervisor was being eliminated.

Mr. Conlin and AFSCME subsequently filed a grievance protesting the District's "bumping" action and alleging that action violated the provisions of the current, applicable labor agreement between the District and AFSCME.

As the Arbitrator in this matter, it is my duty and responsibility to carefully review all of the Record facts and evidence in this matter and determine if the District's actions were in full accordance and compliance with the language and provisions of the applicable labor agreement. It is essentially a cold, hard, technical, legal task.

In my review of the Record facts and evidence, I note that in his job classification of Distribution Supervisor, Mr. Kramer was in a bargaining unit represented by the City of St. Paul Manual and Maintenance Supervisors Association (MMSA) and that MMSA has an ongoing collective bargaining relationship with the District as reflected in a current labor agreement. I also note that *Article 6 -Seniority* (See pp. 10-11) in that contract specifically sets forth a procedure for how employees, covered by that contract, deal with situations involving workforce reductions and the elimination of jobs.

I have no doubt that Mr. Kramer was fully aware and familiar with the MMSA labor agreement and its provisions. I am also certain that upon being advised that his job was being eliminated, he immediately checked the contract to see if

there was any way to avoid layoff. Because of the lack of details in the Record as to the specifics of Mr. Kramer's work history and general situation as a Distribution Supervisor, I am compelled to make some inferences.

- The Distribution Supervisor position is the lowest level job classification in the MMSA bargaining unit.
- Mr. Kramer probably had insufficient seniority to "bump" any other Distribution Supervisors, assuming that there were any other Distribution Supervisors.
- He had no experience in any higher level job classification in the MMSA bargaining unit and, therefore, was unable to fill any vacancies that may have existed in those higher level classifications.

If these inferences are correct, Mr. Kramer would have concluded that he had no chance of remaining in the MMSA bargaining unit and avoiding layoff. But, *Article 6* also contains language that says that, "*Employees who are laid off from their current job title shall have rights to vacancies in previously held job titles in other bargaining units from which they have been promoted.*" Unfortunately, that statement in the MMSA contract is only true, if the labor agreement covering the other bargaining unit specifically permits former bargaining unit employees to bid back into unit job vacancies. I note that the AFSCME labor agreement contains no such permission or vacancy bid procedure for former bargaining unit employees nor is there any evidence that the Union ever intended to permit such action.

In view of the foregoing, Mr. Kramer had to conclude that following the procedure outlined in *Article 6* of the MMSA labor agreement would probably not enable him to avoid layoff.

At some point, Mr. Kramer probably consulted with the District HR section and asked for their assistance in avoiding layoff, in view of his over 25 years of service in the District. Obviously, District Human Resources reviewed his situation and decided to invoke *Section 19B, (2B) - Reasons for Leave of Absence* of the Civil Service Rules and used that provision to demote and displace Mr. Conlin from his AFSCME bargaining unit position as a Furniture Processor and permit Mr. Kramer to return to his former position in that classification - thereby protecting him from layoff.⁵

During the arbitration hearing, both Parties were asked if this procedure, e.g. *CSR 19B, (2b)*, had ever been used before, in the District, to resolve a reduction in workforce situation? Both Parties said, no.

⁵ There is no testimony or evidence in the Record to indicate that Mr. Kramer ever filed a formal request with the District for a Leave of Absence from his previous job classification as a Furniture Processor or is there any other evidence to indicate that, when he accepted the promotion to the Distribution Supervisor classification, he planned to eventually return to his former classification in the Union's bargaining unit. Based upon the existing Record evidence, it appears that the District "created" a Leave of Absence, per *Article 19B, (2b)*, for him, after he learned that his Distribution Supervisor position was to be eliminated.

However, later in the hearing, the Union entered Exhibit #7 into the Record. This Exhibit is a copy of an arbitration decision by Arbitrator Thomas Gallagher involving the City of St. Paul, AFSCME and the St. Paul Supervisors Organization (SPSO). The Issue in the matter involved a question of whether the City could use the Civil Service Rules - essentially the same CSRs being used in this matter - to force a number of Librarians, represented by SPSO, into the bargaining unit represented by AFSCME, despite the fact that the labor agreement between AFSCME and the City contained no language permitting such action. Arbitrator Gallagher held that the City could not use the CSRs to compel AFSCME to allow the Librarians to take job positions in that bargaining unit, in the absence of contract language or agreement by AFSCME to permit such action.⁶ More specifically, Gallagher concluded that where a conflict exists involving CSRs and labor agreements, the labor agreement must "trump" the CSRs.⁷ Gallagher concluded by finding that the City violated the Seniority provisions of AFSCME labor agreement by attempting to use the authority of the CSRs to force AFSCME to allow the Librarians to "bump" into its bargaining unit to avoid layoffs in their SPSO bargaining unit.

Based upon the similarities between the fact situation in Arbitrator Gallagher's Decision and this matter, I find his rationales, findings and conclusions to be very relevant to this situation. In fact the two situations are almost mirror images of one another.

Upon consideration of the foregoing Analysis and Discussion, I make the following Findings:

1. The current applicable labor agreement between the District and the Union contains no language or provision that permits former members of the AFSCME contractual bargaining unit to bid for job vacancies in the bargaining unit or displace current unit employees. Additionally, there is clearly no intention or desire by the Union to establish such a process or procedure for such purpose.
2. The Employer-District may not invoke the Civil Service Rules to modify, override or amend the terms of the applicable labor agreement.
3. I, therefore, find that the Employer-District did not have any contractual basis or authorization to displace and demote the Grievant, Michael Conlin, or to concurrently transfer Kevin Kramer into the AFSCME bargaining unit to fill Conlin's now former position as a Furniture Processor, in June, 2014.

⁶ Interestingly, the Seniority language in AFSCME's contract with the City of St. Paul was virtually identical to the current language in *Article 16* in the Union's applicable labor agreement with the District.

⁷ Gallagher cites Minn. Stat. §179A.07, Subd. 2 as the authority for that conclusion.

CONCLUSIONS

Based upon my analysis, discussion and findings above, I therefore conclude that the Employer-District violated the applicable labor agreement by using *Section 19B, (2b)* of the Civil Service Rules to displace and demote the Grievant, Michael Conlin, from his job classification of Furniture Processor, and to unilaterally install Kevin Kramer, a non-bargaining unit employee, in that job position.

DECISION

Having concluded that the Employer did violate the applicable labor agreement, as alleged by the Union in its Grievance of July 27, 2014; that grievance is hereby sustained and the following Remedy is Awarded.

THE REMEDY

The Employer shall take the following affirmative actions to try to restore the *status quo ante*:

1. Backpay. The Parties have agreed that, based upon the wage reduction that Mr. Conlin suffered as a result of his demotion in June, 2014, he lost \$4,152.24 in wages. Accordingly, the Employer shall immediately make him whole in that amount.
2. Reinstatement. In the hearing, the Parties noted that Mr. Conlin had formally retired from service with the District on April 30, 2015 and is not seeking reinstatement. The Union did note that, as a result of his demotion in June, 2014 and the concurrent reduction in his wage rate, he has suffered an ongoing loss of about \$25 per month in his pension payment. Accordingly, the Employer-District shall take immediate action, as may be required, to insure that Mr. Conlin's pension payments are readjusted to reflect what he would have earned, but for the demotion.
3. The Employer shall delete from Mr. Conlin's Personnel Record all references to his improper demotion in June, 2014; so that his record shows that he continuously served in the classification of Furniture Processor from his ascendancy to that position in 2011 until his voluntary retirement in 2015.
4. Finally, if it deems such action necessary and appropriate, the Union may choose to require that the Employer-District rescind Mr. Kramer's transfer to the Furniture Processor job classification. If the Union makes such a request, the Employer shall immediately comply.

Dated at Minneapolis, Minnesota, this 2nd Day of December, 2015.

/s/ Frank E. Kapsch, Jr.

Arbitrator

Note: I shall retain jurisdiction in this matter for a period of forty-five (45) calendar days from the issuance of this Decision to address any questions or clarifications related thereto.